No. 104

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JAMES H. MCKENNEY,
Clerk.

By J. Marshall for Appt.

Supreme Court of the United States,

OCTOBER TERM, 1901.

Filed April 10, 1902.

THE BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY,

APPELLANT,

vs.

THE CHILE GOLD MINING COMPANY, JOHN MAC GINNIS, EDWARD L. WHITMORE, CARLOS WARFIELD and STEPHEN S. RAYMOND,

APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

APPELLANT'S BRIEF.

LOUIS MARSHALL,
JOHN F. FORBIS,
Appellant's Counsel.

APPEAL PRINTING CO., 41-45 Vesey Street, N. Y.

1380

Supreme Court of the United States,

OCTOBER TERM, 1901.

THE BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY, Appellant, against THE CHILE GOLD MINING COMPANY, John MacGinniss, Edward L. Whitmore, Carlos Warfield and Stephen S. Raymond, Appellees.	Appeal and Certificate from Circuit Court of the United States, District of Montana. No. 330.

Appellant's Brief.

This cause involves precisely the same questions as the case of Boston and Montana Consolidated Copper and Silver Mining Company v. Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze, October Term, 1901, No. 329, which is argued herewith, on a record which is practically a *verbatim* reproduction of the record in that case; the only point of difference between

the two cases being that in this cause the Chile Gold Mining Company and the other defendants are sued as lessees of the Montana Ore Purchasing Company, they having as such lessees attempted to interfere with the complainant's rights of property (Rec., pages 1–18; 29–33).

The answer interposed by the Chile Gold Mining Company is practically the same as that of the Montana Ore Purchasing Company in No. 329.

An application was made by the defendants to dismiss the action upon the ground that there was no federal question presented by the allegations contained in the complainant's bill of complaint herein and the defendant's answer thereto, and the application was granted (Rec., page 36).

Thereupon, the question of jurisdiction was certified by the Circuit Court of the United States for the District of Montana to this Court, the concluding clause of the certificate being as follows:

"The Court further certifies that upon the said bill of complaint, and the said answer thereto, this Court sustained said application to dismiss and entered a decree of dismissal in accordance therewith, holding that a Federal question was not presented by said allegations and that in consequence thereof there was no jurisdiction in this Court in said action. The Court further certifies that the amount involved in said controversy as shown by said bill of complaint was in excess of two thousand dollars, exclusive of interest and costs" (Rec., pages 36–51).

The complaint has assigned errors in the decision and decree as follows:

First. In that the Court erred in dismissing the said action and entering the final decree in favor of the defendants.

Second. In that the Court erred in holding that it had no jurisdiction of the subject matter and

parties in the above entitled action and in dismissing the complainant's bill on motion of the defendant's (Rec., page 55).

As the argument of the questions arising in this case would merely constitute a re-statement of the argument in cause No. 329, the discussion of the questions involved as contained in appellant's brief and argument filed in that cause is hereby adopted as the appellant's argument herein.

It is respectfully submitted for the reasons that so urged that the decree of the Circuit Court of the United States for the District of Montana should be reversed and this cause remanded to that Court with instructions to proceed therewith.

LOUIS MARSHALL,
JOHN F. FORBIS,
Appellant's Counsel.